



*Id.* at ¶ 11. State Farm retained NV5 to conduct an inspection of the property. *Id.* at ¶ 13. Based on NV5's inspection, State Farm estimated the cost to repair the Harpers' property at \$135,054.54. *Id.* at ¶ 16. On or about May 22, 2020, the Harpers submitted a structural assessment from their retained engineer, Eduard C. Badiu ("Dr. Badiu"). *Id.* at ¶ 17, Ex. C. Dr. Badiu opined, in part, that the home was a total loss and must be demolished and rebuilt. *Id.* at ¶ 18; Docket No. 10 at ¶ 18. On May 21, Jordan Murray ("Mr. Murray"), the Harpers' public adjuster, sent a letter to State Farm on behalf of the Harpers stating that the estimate for the cost of repairs based on Dr. Badiu's estimate was \$303,572.22. Docket No. 1 at ¶ 19, Ex. D.

On June 5, 2020, the Harpers submitted a request for an appraisal pursuant to the appraisal provision of the Policy. *Id.* at ¶ 24, Ex. F. The appraisal provision provides as follows:

If you and we fail to agree on the amount of loss, either one can demand that the amount of the loss be set by appraisal. If either makes a written demand for appraisal, each shall select a competent, disinterested appraiser. Each shall notify the other of the appraiser's identity within 20 days of receipt of the written demand. The two appraisers shall then select a competent, impartial umpire. If the two appraisers are unable to agree upon an umpire within 15 days, you or we can ask a judge of a court of record in the state where the residence premises is located to select an umpire. The appraisers shall then set the amount of the loss. If the appraisers submit a written report of an agreement to us, the amount agreed upon shall be the amount of the loss. If the appraisers fail to agree within a reasonable time, they shall submit their differences to the umpire. Written agreement signed by any two of these three shall set the amount of the loss. Each appraiser shall be paid by the party selecting that appraiser. Other expenses of the appraisal and the compensation of the umpire shall be paid equally by you and us.

Docket No. 10, Ex. 1 at Page 18. On June 24, 2020, State Farm objected to the appraisal request and stated that "the appraisal provision of your policy is to resolve differences in the price of repairs which State Farm determined are covered. Appraisal cannot be used to resolve differences about the scope of work to be performed or coverage provided by contract." *Id.* Ex. G. The

Harpers requested reconsideration of the appraisal demand through letters dated July 3, 2020 and July 7, 2020. *See* Docket No. 17, Exs. 5, 6. Additionally, on July 15, 2020, the Harpers received an estimate from Veteran’s Builders of \$348,000.00 for repairing the insured premises “per scope of the work on [State Farm’s] estimate”. *Id.* Ex. 2. State Farm denied the Harpers’ request for reconsideration on July 14, 2020. *Id.* Ex. 7. Finally, the Harpers hired legal counsel and once again asked for reconsideration of the appraisal denial on August 12, 2020. *Id.*, Ex. 8. State Farm once again declined to participate in the appraisal process on August 17, 2020. *Id.* Ex. 9. On October 2, 2020, State Farm filed the instant lawsuit, seeking entry of declaratory judgment that the appraisal provision of the policy does not apply in this instance. *See* Docket No. 1, ¶ 36. In turn, the Harpers counterclaimed and are seeking, in part, enforcement of the appraisal provision of the Policy. *See* Docket No. 10, p. 22, ¶ D.

## II. THE PARTIES’ POSITIONS

The Harpers argue that the dispute between the parties is over the “amount of loss,” and therefore, it became mandatory for State Farm to participate in the appraisal process once the Harpers made a written demand for appraisal. Document No. 17, p. 13; *see* Document No. 17, Ex. 1, (Policy No. 42-CF-F292-9 at p. 18). The Harpers assert that there is no dispute over coverage because everyone agrees that the Harpers’ losses are a result of the tornado covered by the Policy, and State Farm has already made payments associated with the loss. *See* Document No. 17, p. 1, 13. The Harpers acknowledge a disagreement in the scope of repairs but point to “a significant six-figure dispute regarding the amount of loss exists even based on State Farm’s own scope of repairs.” *Id.* p. 3. For these reasons, the Harpers argue that appraisal is proper to determine the scope and method of repairs. *Id.* p. 18.

State Farm responds that the primary dispute between the parties relates to the different

engineering scope of work opinions submitted by NV5 -- that the property can be repaired -- and Dr. Badiu -- that the property is a total loss -- and that this is not a dispute that can be resolved by appraisal. Docket No. 23, p. 5.

### III. ANALYSIS

Jurisdiction in this case relies upon 28 U.S.C. § 1332, in that the controversy is between citizens of different states and the amount in controversy is greater than \$75,000.00 exclusive of interest and costs. Therefore, the Court must apply the law of the forum state, Tennessee, in interpreting the parties' contract and its provisions. *See Glob. Aero., Inc. v. Phillips & Jordan, Inc.*, No. 3:15-CV-105-PLR-CCS, 2015 U.S. Dist. LEXIS 124911 (E.D. Tenn. Sep. 17, 2015); *Uhl v. Komatsu Forklift Co., Ltd.*, 512 F.3d 294, 302 (6th Cir. 2008). In Tennessee, courts interpret insurance contracts by giving the policy's terms their natural and ordinary meaning. *Tata v. Nichols*, 848 S.W.2d 649, 650 (Tenn. 1993). Generally, an "appraiser's authority is limited to the authority granted in the insurance policy or granted by some other express agreement of the parties." *Merrimack Mut. Ins. Co. v. Batts*, 59 S.W.3d 142, 152 (Tenn. Ct. App. 2001). Absent an express clause in the insurance contract, "appraisers have no power to decide coverage or liability issues." *Id.* at 152-53 (compiling cases). If the parties already have decided liability, an appraisal would waive all new defenses the insurer may present with regard to liability. *Hickerson v. German-Am. Ins. Co.*, 96 Tenn. 193, 33 S.W. 1041 (Tenn. 1896). However, if liability is disputed, an appraisal on the "amount of loss" would not "vest the appraisers with the authority to decide questions of coverage and liability." *Merrimack Mut. Fire Ins. Co.*, 59 S.W.3d at 152.

In the instant case, neither party disputes that the appraisal provision of the Harpers' Policy is intended to resolve disagreements as to the amount of loss. Additionally, State Farm concedes that the damage to the Insured Premises is covered by the Harpers' Insurance policy and that they

are liable for the cost to return the Premises to its pre-loss condition. The question before the court is whether a disagreement over the scope of the work is something more than a disagreement over the amount of loss.

The Court finds that the appraisal provision should be enforced. *See Kush Enter. LLC v. Massachusetts Bay Insurance Company*, 3:18-CV-492 (E.D. Tenn. Nov. 7, 2019) (Document No. 32) (declining to treat motion to compel appraisal as one for summary judgment and compelling appraisal where the dispute centered on the amount of loss). Appraisal is proper in this instance because defining the “scope of the work” is inherent in determining the “amount of loss.” Regardless of whether one estimate recommends tearing down the structure and one does not, they are still competing estimates that differ as to the amount of loss. Under the Harpers’ Insurance Policy, State Farm is liable for the cost of repairing or replacing the damaged part of the insured premises. Section 1- Loss Settlement of the Harpers’ Insurance policy states that “we [State Farm] will pay the cost to **repair or replace** with similar construction and for the same use on the premises shown in the Declarations, the damaged part of the property covered under Section 1- Coverages, Coverage A – Dwelling.” *See* Docket No. 10, Ex. 1 (Policy No. 42-CF-F292-9 at p. 15) (emphasis added). Once again, State Farm does not dispute that the entire damage done to the premises was caused by the tornado. State Farm only disputes the scope of the work required to repair the Harpers’ house to its pre-loss condition. Because liability is not at issue in this instance, a dispute over scope of the work is nothing more than a dispute over the monetary value of returning the insured premises to its pre-loss condition. Whether the property needs to be repaired or replaced is ultimately a disagreement over the amount of loss. Based on the plain language of the insurance policy, this is a matter that may be handled through appraisal. *Id.*, p. 18; *see Kush Enter. LLC* 3:18-CV-492 (Document No. 32) (“The plain language of the provision allows either

party to demand appraisal when there is a disagreement on the amount of loss. As a result, the Court finds the provision is applicable and can be enforced by this Court.); *Correnti v. Merchs. Preferred Ins. Co.*, No. 12-6303, 2013 U.S. Dist. LEXIS 13053 (E.D. Pa. Jan. 31, 2013) (holding that the contention that a dispute over the extent of damages precludes appraisal was “frivolous” and that the appraisal provision was properly invoked).

Compelling the appraisal process is consistent with the intention of the parties when they agreed to the contract and courts have regularly compelled appraisal pursuant to such provisions in insurance agreements. *See J. Wise Smith & Assocs. v. Nationwide Mut. Ins.*, 925 F. Supp. 528 (W.D. Tenn. 1995); *Childs v. State Farm Fire & Casualty Co.*, 899 F. Supp. 613 (S.D. Fla. 1995).<sup>1</sup> Enforcing the appraisal provision is also consistent with the purpose of appraisal provisions in the first place. “It is not surprising that the assessors may have some disagreement...about the scope and method of necessary repairs. But to say such disputes are sufficient to negate the appraisal provision in the policy would effectively eliminate appraisal as a workable method of alternative dispute resolution.” *Williamson v. Chubb Indem. Ins. Co.*, No. 11-cv-6476, 2012 U.S. Dist. LEXIS 31648, \*10-11 (E.D. Pa. Mar. 8, 2012). Finally, because coverage is not disputed, no question of fact regarding liability for the cost to repair or replace is at issue. Based on the plain language of the insurance policy, appraisal becomes mandatory once properly invoked by either party. The Court finds that the Harpers properly invoked the appraisal provision and therefore ordering State Farm to comply with the contract is consistent with the intent of the parties in this instance.

The Court notes that this decision does not expand the scope of the appraisal process set

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<sup>1</sup> The Harpers also noted several other cases where courts have compelled appraisal. *See, eg., Zar Realty Mgmt. Corp. v. Allianz Ins. Co.*, 2003 U.S. Dist. LEXIS 5011, \*8-12 (S.D.N.Y. Mar. 31, 2003); *Drescher v. Excelsior Ins. Co.*, 188 F. Supp. 158, 159 (D.N.J. 1960); *Opar v. Allstate Ins. Co.*, 751 So.2d 758, 761 (Fla. Dist. Ct. App. 2000); *Meyer v. State Farm Fire & Cas. Co.*, 582 A.2d 275, 279 (Md. Ct. Spec. App. 1990); *Aetna Cas. & Sur. Co. v. Ins. Com’r*, 445 A.2d 14, 21 (Md. 1982); *Hala Cleaners, Inc. v. Sussex Mut. Ins. Co.*, 277 A.2d 897, 898 (N.J. Super. Ct. Ch. Div. 1971); *Saba v. Homeland Ins. Co.*, 112 N.E. 2d 1, 2-3 (Ohio 1953); *Standard Fire Ins. Co. v. Fraiman*, 514 S.W.2d 343, 346 (Tex. Civ. App. 1974).

out under the policy. An “appraiser’s authority is limited to the authority granted in the insurance policy or granted by some other express agreement of the parties.” *Merrimack Mut. Fire. Ins. Co.* 59 S.W.3d at 152. Here, the provision does not allow the appraisers to make final determinations on the causation, scope, or liability under the policy, just the amount of the loss. State Farm can still dispute those issues after the appraisal is complete, though, in this instance, State Farm does not contest liability. If the parties disagree on these issues after the appraisal process, the Court will decide them. *See Merrimack Mut. Fire. Ins. Co.*, 59 S.W.3d at 153.

#### IV. CONCLUSION

The Court grants the Harpers’ Motion to Compel Appraisal (Document No. 16) as follows:

1. The parties are **ORDERED** to select their respective appraisers within **ten (10) days** of this Order;
2. Upon selection, the two appraisers must promptly confer to appoint an umpire within **ten (10) days** of their appointment;
3. If an umpire cannot be agreed upon, the Court **will appoint** an umpire of its choosing upon request by either party;
4. The appraisal panel must complete its appraisal **within ninety (90) days** of the umpire’s appointment, including any decision by the umpire; and
5. The matter is **STAYED** pending the appraisal process.

The Court will stay this Order pending any Motion for Review under Local Rule 72.01 (a). If timely review is sought, this stay shall remain in place pending further order by the district judge. Any objection to this Order shall be made in accordance with Federal Rules of Civil Procedure 72(a) and Local Rule 72.02 (a) by way of a “Motion for Review” which shall be filed within 14 days after service of this Order. The motion for review shall state with particularity that

portion of the Order for which review is sought, and shall be accompanied by separately filed supporting memorandum of law any response to the Motion shall be filed within 14 days of filing the Motion.

**IT IS SO ORDERED.**



**JEFFERY S. FRENSLEY**  
**United States Magistrate Judge**